IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs, June 3, 2009

ANNAMARIE STURGEON v. ROBERT STURGEON

Direct Appeal from the Circuit Court for Sevier County
No. 2007-0026-1 Hon. Ben W. Hooper, II., Circuit Judge

No. E2008-01099-COA-R3-CV - FILED JULY 24, 2009

In this divorce action the Trial Court granted the wife a divorce, granted the mother custody of the daughter, and ordered child support. The husband has perfected his appeal *pro se*, but failed to file a transcript of the evidence admitted before the Trial Court. Essentially, all the issues raised on appeal by the husband are factual in nature, and in the absence of a transcript of evidence we must conclusively presume that the Trial Court's findings of fact are correct and we therefore affirm the Judgment of the Trial Court and remand.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Circuit Court Affirmed and Remanded.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the Court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

Robert S. Sturgeon, Sevierville, Tennessee, *pro se*.

Melissa Moore, Sevierville, Tennessee, for appellee, AnnaMarie Sturgeon.

OPINION

Robert Sturgeon appeals the Final Decree of Divorce granted to Annamarie Sturgeon on April 24, 2008.

At the time Annamarie Sturgeon filed her Complaint for divorce on January 11, 2007, the Sturgeons had been married seventeen years, but had been living separately for two years and three months. One daughter was born to the marriage and was fifteen years old at that time.

The wife averred that the husband had been guilty of inappropriate conduct, that irreconcilable differences had arisen between the parties and the wife asked to be named the primary residential parent. She asked for child support in the amount of $497.00 a month. She further averred that the parties owned no real property and asked that each party receive their respective items of personal property, including automobiles, bank accounts, life insurance plans and retirement plans, etc., and that each be declared responsible for their own debts.

A proposed Permanent Parenting Plan was attached to the Complaint, which provided that the husband was to have co-parenting time every Sunday and at any other time agreed on by the wife and their daughter.

The husband answered the Complaint on February 9, 2007, and denied there were grounds for divorce. Mediation was unsuccessful, and the husband's attorney moved to withdraw as attorney for the husband. The Trial Court allowed the defendant's counsel to withdraw by order on December 6, 2007. A hearing was held on that date on the Complaint and on defendant's Motion to continue. As a result of that hearing which included proof, the Court entered an order on January 4, 2008 as follows:

1. The parties were declared divorced upon stipulated grounds pursuant to Tenn. Code Ann. § 36-4-129(b).

2. The custody schedule for the daughter shall remain the same as it has been since the separation.

3. The child support issue was reserved for pending future order of the Court.

4. Debt and assets obtained by either party from the date of the divorce forward shall be the sole and separate debt or asset of that party.

5. The issues of debt, retirement, personal property, child support and co-parenting were reserved pending further hearing.

6. Defendant's motion to continue was granted and a hearing was set for February 26, 2008.[1]

[1]Apparently the husband filed a notice of appeal of the December 6, 2007 order which was dismissed and remanded by the Court of Appeals as there was no final judgment.

On March 13, 2008, the husband, *pro se*, filed a pleading titled "Counter Complaint" which actually appears to be an amended answer with a prayer that the Court award him alimony in the amount of $475.00 a month.

A hearing on the remaining issues in the case and on defendant's Motion to Set Aside the Order of December 6, 2007 was held on February 26, 2008. The Court granted the motion to set aside the December 6, 2007 order with several exceptions. The Court did not set aside number 2 of that order regarding the custody schedule and also did not set aside number 4 regarding the allocation of debts and assets from the date of the order forward and those sections of the order remained in full force and effect.

The matter was further heard on April 7, 2008 with testimony from witnesses and statements by counsel. The Final Decree was entered on April 24, 2008 which granted the wife a divorce based on the grounds of inappropriate marital conduct "due to the long and continual emotional effects on the Plaintiff of Defendant's conduct and the effects of his verbal assaults and name calling on Plaintiff." The wife's proposed parenting plan was approved, each party was assigned the sole responsibility for their individual debts, each party was awarded their own cars, bank accounts and retirement plans. The Court found the defendant to be voluntarily unemployed and order him to pay child support in the amount of $325.00 a month.

The husband filed a notice of appeal on May 22, 2008 *pro se*. He did not file with the Trial Court either a transcript or a statement of the evidence in a timely fashion as required by the Rules of Appellate Procedure. By January 15, 2009 he was ordered by the Court of Appeals to file a transcript, a statement of the evidence or a notice indicating that neither would be filed. We determined from an Order of this Court that the husband did file a notice that neither transcript nor statement of the evidence would be filed. The wife then filed a motion with this Court to dismiss the appeal on the ground that the appellant did not follow the Rules of Appellate Procedure in preparing his brief. The motion was denied based on principle that "courts give *pro se* litigants who are untrained in the law a certain amount of leeway in drafting their pleadings and briefs." *Young v. Barrow*, 130 S. W. 3d 59, 63 (Tenn. Ct. App. 2003), *perm. to appeal denied*, (Tenn. Jan. 26, 2004).

The appellant has raised the following issues:

A. Whether the Trial Court erred in granting a divorce to Mrs. Sturgeon?

B. Whether the Trial Court erred in finding inappropriate martial conduct on the part of Mr. sturgeon?

C. Whether the Trial Court was biased in favor of Mrs. Sturgeon?

On appeal, we review the Trial Court's findings of fact in a divorce case *de novo* with the presumption that the Trial Court's factual determinations are correct unless the evidence

preponderates against such factual determinations. *Brooks v. Brooks*, 992 S.W.2d 403, 404 (Tenn.1999)(citing *Farrar v. Farrar*, 553 S.W.2d 741,743 (Tenn. 1997)). In this regard, the burden is on the appellant to provide the Court with a transcript of the evidence or a statement of the evidence from which we can determine whether the evidence does in fact preponderate for or against the findings of the trial court. *Gross v. McKenna*, No. E2005-02488-COA-R3-CV, 2007 WL 3171155 at * 2 (Tenn. Ct. App. Oct. 30, 2007)(citing *Coakley v. Daniels,* 840 S.W.2d 367, 370 (Tenn. Ct. App.1992).

Appellant's failure to provide a record of the proceedings below does not enable us to review the issues he raises. As the Supreme Court stated in *State v. Ballard,* 855 S.W.2d 557 (Tenn.1993), "[w]hen a party seeks appellate review there is a duty to prepare a record which conveys a fair, accurate and complete account of what transpired with respect to the issues forming the basis of the appeal." *State v. Bunch,* 646 S.W.2d 158, 160 (Tenn.1983). Where the record is incomplete and does not contain a transcript of the proceedings relevant to an issue presented for review, or portions of the record upon which the party relies, an appellate court is precluded from considering the issue. *State v. Roberts,* 755 S.W.2d 833, 836 (Tenn. Cr. App.1988). "[W]here the issues raised go to the evidence, there must be a transcript. In the absence of a transcript of the evidence, there is a conclusive presumption that there was sufficient evidence before the trial court to support its judgment." *Coakley,* 840 S.W.2d at 370.

The first two issues raised by the appellant can be summarized as whether the Trial Court erred when it awarded the wife a divorce based on a finding that Mr. Sturgeon was guilty of inappropriate conduct due to the "long and continual emotional effects" his conduct had on Mrs. Sturgeon and due to the effects of his verbal assaults and name calling? The Trial Court's finding on this issue is purely factual, and we cannot consider the issue on appeal, due to the lack of a transcript or a statement of the evidence.

Appellant also raised the issue that the Trial Court was biased toward the wife. This issue is also a factual issue and we are unable to evaluate whether the Trial Court did exhibit bias in favor of the plaintiff absent a transcript or statement of the evidence. We conclusively presume he did not.

Accordingly, we conclusively presume that there was no evidence to support this contention raised by the appellant. For the foregoing reasons, we affirm the Judgment of the Trial Court and remand, with the cost of the appeal assessed to Robert Sturgeon.

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HERSCHEL PICKENS FRANKS, P.J.